8-30-2016

State v. Dean Respondent's Brief Dckt. 43201

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 43201**
Plaintiff-Respondent,	)	
	)	**Lemhi County Case No.**
v.	)	**CR-MD-2011-345**
	)	
CHRISTOPHER T. DEAN,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI

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STATEMENT OF THE CASE

Nature of the Case

Christopher T. Dean appeals from the district court's intermediate appellate decision that affirmed his conviction for second degree stalking. On appeal, Dean argues the district court erred by affirming the magistrate's order denying his motion to dismiss and by finding the evidence presented at trial sufficient to sustain the magistrate's finding of guilt.

Statement of Facts and Course of Proceedings

In October 2010, Natasha Mullins and her toddler son began living in an apartment above Dean's garage. (R., p.69; Tr.[1], p.17, L.22 – p.21, L.6.) Ms. Mullins rented the apartment from Dean and his wife. (R., p.69; Tr., p.20, Ls.9-15.) The written lease agreement indicated the rental property was a "1 bedroom/1 bathroom over garage (upstairs) apartment." (R., p.69; State's Exhibit 1.) However, with the Deans' knowledge and consent, Ms. Mullins also had access to and used a second bathroom (the "front bathroom") and a laundry room, both of which were adjacent to her apartment above the garage but which were not included as part of the rental property in the written lease agreement. (R., pp.69-70, 72; Tr., p.24, L.19 – p.26, L.13.) Ms. Mullins also later "converted what had been Ms. Dean's office" – which was also above the Deans' garage – "into a bedroom for her son." (R., pp.69-70; Tr., p.24, Ls.6-18.)

[1] All references herein to "Tr." are to the transcript entitled "June 24, 2013 Trial," which was augmented into the appellate record by order of the Idaho Supreme Court. (See 5/25/16 Order granting state's motion to augment.)

In the summer of 2011, while Ms. Mullins was still residing in the apartment above the Deans' garage, Dean and his wife went out of town for an extended period. (R., p.70; Tr., p.26, L.23 – p.27, L.4.) Dean returned home, without his wife, on August 6, 2011. (R., pp.70-71; Tr., p.27, Ls.5-9.) That same evening, Ms. Mullins returned to her apartment after having been out and discovered that some of her clothing, which she had left near the sink in the front bathroom, had been disturbed. (R., pp.70-71; Tr., p.27, L.22 – p.28, L.3, p.55, L.3 – p.56, L.6; Defendant's Exhibit A.) Ms. Mullins noticed that the same thing happened every day over the next several days, explaining: "Somebody was entering my apartment and messing with my clothes." (Tr., p.29, Ls.2-3.)

On August 12, 2011, while Dean's wife was still out of town, Ms. Mullins and Dean attended a concert together. (R., p.70; Tr., p.63, L.18 – p.66, L.12.) On the drive home, Dean made a pass at Ms. Mullins. (R., p.70; Tr., p.65, L.19 – p.67, L.6.) He told her he wanted to get a drink and "said maybe I'll get you drunk enough to get you into bed." (Tr., p.66, L.21 – p.67, L.6.) Ms. Mullins declined Dean's advances and went home and locked her doors. (Tr., p.67, Ls.7-17.) The next day Ms. Mullins began to suspect it was Dean who had been entering her apartment and tampering with her clothes. (Tr., p.84, Ls.11-20.)

Beginning on August 14 and continuing through August 16, 2011, Ms. Mullins took photographs to document the location and position of her clothing each time she left and returned to her apartment. (Tr., p.29, L.19 – p.30, L.8, p.31, L.3 – p.34, L.3; State's Exhibits 2-16; Defendant's Exhibits F-G.) The items of clothing Ms. Mullins photographed were located variously throughout the

property Ms. Mullins rented and/or used with the Deans' consent, including in the front bathroom, the laundry room, and in Ms. Mullins' bedroom closet. (Tr., p.31, L.19 – p.32, L.6.) On each occasion she returned home, Ms. Mullins discovered the items of clothing she had photographed, which always included her undergarments, had been disturbed. (R., p.71; Tr., p.33, L.7 – p.34, L.3.)

On August 15, 2011, in addition to photographing her clothing, Ms. Mullins set up two hidden video cameras, one under the vanity in the front bathroom and one in her kitchen cabinets. (Tr., p.34, L.25 – p.37, L.23, p.39, L.19 – p.40, L.15.) Ms. Mullins activated the camera in the front bathroom before she left the apartment in the morning. (Tr., p.37, L.9 – p.38, L.1, p.75, L.21 – p.76, L.1.) The resulting video recording, taken while Ms. Mullins was away, shows the legs of an individual wearing tennis shoes that Ms. Mullins identified as belonging to Dean walking into the bathroom and past the hidden camera. (State's Exhibit 17; Tr., p.38, Ls.8-25.) While out of view of the camera, the individual twice makes what appear to be long sniffing sounds. (State's Exhibit 17.) The individual then walks back in front of the camera and out of the bathroom. (State's Exhibit 17.) A second video, which was taken from the vantage point of Ms. Mullins' kitchen cabinets while she was out of the apartment later in the day on August 15, shows Dean entering Ms. Mullins' apartment, stopping first in the front bathroom, then walking into the kitchen and past the camera toward the area of Ms. Mullins' bedroom. (State's Exhibit 18; R., p.70; Tr., p.39, L.19 – p.42, L.3, p.84, L.23 – p.86, L.6.) Approximately 90 seconds later, Dean walks back into the view of the camera in the kitchen, looks around, and then walks out

of the kitchen and into the hallway where he bends down, picks up an item of clothing from what Ms. Mullins identified was a laundry basket, and presses the clothing to his face. (State's Exhibit 18; R., p.70, Tr., p.42, Ls.18-20, p.86, L.13 – p.87, L.4.)

The state charged Dean by Uniform Citation with two counts of second degree stalking, both of which were alleged to have been committed on August 15, 2011. (R., p.8.) More than a year later, after both a speedy trial waiver (see R., pp.1-2) and what was apparently a failed mediation attempt (see R., pp.2, 17-21), Dean filed a motion to dismiss the charges with prejudice (R., pp.22-25), asserting as the basis for the motion that "the citation in this case is facially deficient, and the statute of limitations for any conduct alleged to have violated a misdemeanor statute is past [sic]" (R., p.24).

Before the magistrate ruled on Dean's motion to dismiss, the state sought and was granted leave to file an "Amended Complaint" charging Dean with one count of second degree stalking and one count of unlawful entry. (R., pp.32-34.) Dean thereafter filed a second motion to dismiss, arguing the second degree stalking charge was not supported by probable cause, and the unlawful entry charge was barred by the statute of limitations and also failed as a matter of law. (R., pp.37-39; see also R., pp.48-50, 53-56.) After a hearing and briefing, the magistrate denied Dean's motions to dismiss the second degree stalking charge but granted his motion to dismiss the unlawful entry charge on statute of limitations grounds. (R., pp.48-50, 53-56.)

Consistent with the magistrate's ruling, the state filed a "Second Amended Complaint" charging Dean with a single count of second degree stalking. (R., pp.63-64.) Dean proceeded to a court trial (R., pp.65-67), after which the magistrate entered written findings and conclusions of law finding Dean guilty of second degree stalking (R., pp.68-77). Dean thereafter filed a "Motion For Reconsideration, Renewed Motion For Acquittal; And Dismissal Of Charges" (R., pp.78-84), which the magistrate denied (R., pp.85-92). The magistrate entered judgment and placed Dean on probation. (R., pp.93-94.) Dean timely appealed to the district court (R., pp.95-99), which affirmed (R., pp.115-19). Dean timely appealed to this Court. (R., pp.120-23.)

ISSUES

Dean states the issues on appeal as:

> 1. Did the lower courts err in not dismissing the sole remaining count because of the facial deficiency of the citation and the statute of limitations?
>
> 2. Did the lower courts err in not acquitting the Defendant because 1) the State failed to show the requisite intent of malice, 2) the lower courts erred in its [sic] definition of malice, and 3) the trial court fail [sic] to apply cannons of statutory construction and the Rule of Lenity in this case to a vaguely worded statute?
>
> 3. Did the trial court fail to have sufficient substantial and credible evidence to support a finding of guilt beyond a reasonable doubt?

(Appellant's brief, pp.10-11.)

The state rephrases the issues as:

1. Has Dean failed to show the district court erred by affirming the magistrate's orders denying Dean's motions to dismiss the second degree stalking charge?

2. According to the court minutes, five witnesses (four state's witnesses and one defense witness) testified at Dean's trial for second degree stalking. On appeal to the district court, Dean provided a partial trial transcript, containing the testimony of only two of the five witnesses who testified at trial. Because missing portions of the record are presumed to support the trial court's rulings, must this Court affirm the district court's appellate determination that the state presented sufficient evidence to sustain the trial court's finding that Dean was guilty of second degree stalking?

ARGUMENT

I.
The District Court Correctly Applied The Law To The Facts In Affirming The Magistrate's Orders Denying Dean's Motions To Dismiss

A. Introduction

The Uniform Citation, filed on August 22, 2011, charged Dean with having committed two counts of second degree stalking in violation of Idaho Code Section "18-7906(c)(4)." (R., p.8.) More than a year later, Dean filed a motion to dismiss the charges on the basis that the citation cited a non-existent subsection of I.C. § 18-7906 and, therefore, failed to allege a crime. (R., pp.22-25.) Dean also argued that, because the Uniform Citation did not charge a crime, any attempt by the state to amend the charging document would necessarily constitute the charging of a new offense outside the one-year statute of limitation for misdemeanor prosecutions. (Id.)

Before the magistrate ruled on Dean's motion, the state sought and was granted leave to file an amended complaint. (R., p.32.) Relevant to this appeal, the Amended Complaint charged Dean with one count of second degree stalking, in violation of "I.C. [§] 18-7906," for having

> knowingly and maliciously engage[d] in a course of conduct that seriously alarmed, annoyed or harassed the victim and is such as would cause a reasonable person substantial emotional distress, to-wit, repeatedly and without her consent, entered onto property leased or occupied by the victim.

(R., pp.33-34.) Dean filed a second motion to dismiss, arguing in relevant part that the stalking charge was not supported by probable cause. (R., pp.37-39.)

After a hearing, the magistrate denied Dean's motions to dismiss as they related to second degree stalking, ruling (1) the citation to a non-existent subsection of I.C. § 18-7906 in the original charging document was merely a clerical error; (2) the filing of the amended complaint charging second degree stalking in violation of I.C. § 18-7906 without reference to any particular subsection of that statute was simply a correction of the original clerical error and did not charge a new crime; and (3) the charge was supported by probable cause. (R., pp.46-57.) The district court affirmed the magistrate's rulings on intermediate appeal. (R., pp.116-17.)

Dean challenges the lower courts' rulings, arguing as he did below that the Uniform Citation did not charge a crime and that the second degree stalking charge alleged in the Amended Complaint was a new charge, which was barred by the one-year statute of limitation. (Appellant's brief, pp.15-20.) Dean's arguments fail. A review of the record and of the applicable law supports the magistrate's determination that the citation and the amended complaint both charged second degree stalking and, therefore, the amended charge was not time-barred. The district court correctly affirmed the magistrate's orders denying Dean's motions to dismiss.

B. Standard Of Review

On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court "directly review[s] the district court's decision." State v. DeWitt, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008) (citing Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)). The

appellate court "examine[s] the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings." Id. "If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, [the appellate court] affirm[s] the district court's decision as a matter of procedure." Id. (citing Losser, 145 Idaho 670, 183 P.3d 758; Nicholls v. Blaser, 102 Idaho 559, 633 P.2d 1137 (1981)).

A trial court's decision on a motion to dismiss is reviewed for an abuse of discretion. State v. Daniels, 134 Idaho 896, 898, 11 P.3d 1114, 1116 (2000). The applicability of a statute of limitations to an action under a given set of facts is a question of law over which the appellate courts exercise free review. State v. O'Neill, 118 Idaho 244, 245, 796 P.2d 121, 122 (1990).

C. The Second Degree Stalking Charge Alleged In The Amended Complaint Was Not A New Or Different Offense Than Alleged In The Uniform Citation And, Therefore, Was Not Barred By The Statute Of Limitation

As a general rule, a prosecution for any misdemeanor must be commenced by the filing of a complaint within one year of its commission. I.C. § 19-403(1). "The complaint in a uniform citation may be used as the complaint to prosecute a misdemeanor …." I.M.C.R. 3(b). Regardless whether the state initially charges the misdemeanor by complaint or by uniform citation, "[t]he court may amend or permit to be amended any process or pleading at any time before the prosecution rests including the alleging of a lesser included offense, but no greater or different offense may be charged if substantial rights of the defendant

are prejudiced." I.M.C.R. 3(d); compare I.C. § 19-1420 ("An information or indictment cannot be amended so as to charge an offense other than that for which the defendant has been held to answer").

In this case, the state charged Dean by Uniform Citation with two counts of second degree stalking, both of which were alleged to have been committed on August 15, 2011, in violation of I.C. § "18-7906(c)(4)." (R., p.8.) The citation was filed on August 22, 2011, well within the one-year limitation period for misdemeanor prosecutions. (R., p.8.) More than a year later, after Dean moved to dismiss the charges (see R., pp.22-25), the magistrate permitted the state to file an Amended Complaint which, relevant to this appeal, again charged Dean with having committed the misdemeanor offense of second degree stalking, in violation of I.C. § "18-7906" (R., pp.32-34.) Because even a cursory review of the citation and the Amended Complaint shows they charged the same offense – second degree stalking – the second degree stalking charge alleged in the Amended Complaint was merely a continuation of the prosecution initiated by the filing of the Uniform Citation and, as such, was not time-barred.

Dean argues otherwise. Specifically, he contends the uniform citation did not charge a crime at all and, therefore, the second degree stalking charge alleged in the Amended Complaint was necessarily a "different and distinct offense" for which the statute of limitation had already run. (Appellant's brief, pp.18-20.) According to Dean, "the uniform citation failed to adequately inform the Defendant of the nature of the crime against him, and never charged a crime at all" because it did not allege Dean "'engage[d] in a course of conduct' i.e.

repeated acts of nonconsensual contact involving the victim," which is a "necessary element" of second degree stalking under I.C. § 18-7906. (Appellant's brief, pp.19-20 (emphasis original).) Dean argues this "obvious deficienc[y]," combined with the reference in the citation to a non-existent subsection of I.C. § 18-7906, were fatal defects in the citation and, consequently, "no crime was ever alleged against the Defendant until the 'amended complaint' was filed" in September 2012, at which "time the statute of limitations had run and the court no longer had jurisdiction over the matter." (Appellant's brief, p.20.) Dean's arguments are without merit.

A charging document is legally sufficient if it satisfies two requirements: "'it must impart jurisdiction'" and it must "'satisfy due process.'" State v. Schmierer, 159 Idaho 768, ___, 367 P.3d 163, 165 (2016) (quoting State v. Severson, 147 Idaho 695, 708, 215 P.3d 414, 428 (2009)). A charging document confers jurisdiction when it alleges the defendant committed a criminal offense in the State of Idaho. Severson, 147 Idaho at 708, 215 P.3d at 428; State v. Rogers, 140 Idaho 223, 228, 91 P.3d 1127, 1132 (2004); State v. Olin, 153 Idaho 891, 893, 292 P.3d 282, 284 (Ct. App. 2012). To satisfy due process, a charging document must ordinarily be specific enough to ensure that the defendant has a meaningful opportunity to prepare his defense. Severson, 147 Idaho at 709, 215 P.3d at 429 (citations omitted). In the case of a uniform citation, however, such specificity is not required. The misdemeanor criminal rules provide not only that "[t]he complaint in a uniform citation may be used as the complaint to prosecute a misdemeanor," I.M.C.R. 3(b), but also that "a trial

may be held on the complaint contained in the citation without making a sworn complaint, unless a sworn complain is demanded by any party within 28 days after the entry of a plea of not guilty or 7 days before trial, whichever is earlier," I.M.C.R. 3(d). As recognized by the Idaho Supreme Court, "a uniform citation provides a simplified way of charging misdemeanors and infractions and resolving the resulting cases expeditiously." State v. Cahoon, 116 Idaho 399, 401, 775 P.2d 1241, 1243 (1989). Thus, in the absence of a demand for a sworn complaint, a uniform citation satisfies due process notice requirements if it contains a brief description of the offense, the applicable code section, and the date and time it was alleged to have been committed. See id. at 400-01, 775 P.2d at 1242-43 (holding citation sufficient to satisfy notice requirements and charge an offense where it was inscribed with "the date, time, the words 'resisting, obstructing and delaying an officer' and the number of the applicable code section").

Application of the above legal principles to the Uniform Citation filed by the state in this case shows the citation was legally sufficient to charge Dean with two counts of second degree stalking. The citation alleged that, on August 15, 2011 at 1800 o'clock p.m.," Dean committed two counts of "Stalking 2nd Degree," in violation of I.C. § "18-7906(c)(4)." (R., p.8.) Although Dean correctly notes I.C. § 18-7906 does not contain a subsection "(c)(4)," the reference in the citation to that non-existent subsection was not a jurisdictional defect and did not deprive Dean of notice of the nature of the crime. See I.C.R. 7(b) (a charging document should contain an "official or customary" citation to the statute

violated, but any error in the citation is not grounds for dismissal unless it misled the defendant to his prejudice); State v. Page, 135 Idaho 214, 222, 16 P.3d 890, 898 (2001) (same). As found by both the magistrate and district courts, the citation clearly alleged Dean committed the offense of stalking in the second degree, in violation of I.C. § 18-7906. (R., pp.49-50, 53-54, 116.) The extraneous citation to subsection "(c)(4)," while incorrect, was not misleading, as even Dean recognized in his motion to dismiss that the officer who wrote the citation may have intended to cite subsection "(2)(c)(iv)" of I.C. § 18-7906 and thereby allege that Dean violated the stalking statute by "enter[ing] onto or remain[ing] on property owned, leased or occupied by the victim." (R., p.23 (citing I.C. § 18-7906(2)(c)(iv)).) And, ultimately, that is precisely the conduct that formed the basis of the second degree stalking charge alleged in the Amended Complaint. (See R., pp.33-34, 63-64.) Because the record shows Dean was actually on notice of the nature of the charges against him, his claim that the Uniform Citation failed to sufficiently provide him with such notice and, therefore, failed to charge a crime at all, necessarily fails.[2]

Dean's argument that the second degree stalking charge alleged in the Amended Complaint was filed outside the statute of limitations rests entirely on his claim that the Uniform Citation was not sufficiently specific enough to charge

[2] Even if the Uniform Citation did not adequately apprise Dean of the nature of the charged offenses, Dean's remedy would have been to demand a sworn complaint within 28 days after the entry of his not guilty plea. I.M.C.R. 3(b); Cahoon, 116 Idaho at 401, 775 P.2d at 1243. Because Dean did not even attempt to avail himself of that remedy, his motion to dismiss the citation on the alleged basis that it failed to provide him with adequate notice of the charged offenses was not well-taken. Cahoon, 116 Idaho at 401, 775 P.2d at 1243.

an offense. For the reasons stated above, however, the Uniform Citation fairly charged Dean with second degree stalking. Because the citation charging second degree stalking was filed well within the one-year limitation period for misdemeanor prosecutions, and because the second degree stalking charge alleged in the Amended Complaint was not a new or distinct offense, the district court correctly affirmed the magistrate's orders denying Dean's motions to dismiss.

II.
Dean Failed To Provide The District Court With An Adequate Record For Appellate Review Of His Sufficiency Of The Evidence Claims

Dean challenges the sufficiency of the evidence supporting his second degree stalking conviction, arguing the state failed to prove he acted with malice and otherwise failed to prove the remaining elements of the crime beyond a reasonable doubt. (Appellant's brief, pp.20-43.) Dean's challenges to the sufficiency of the evidence fail, however, because he failed to provide the district court (and, consequently, this Court) with a complete trial transcript and, therefore, failed to provide an adequate record for appellate review of his claims.

It is axiomatic that the appellant bears the burden of providing a sufficient record on appeal to substantiate his or her appellate claims. State v. Beason, 119 Idaho 103, 105, 803 P.2d 1009, 1011 (Ct. App. 1991); State v. Lopez, 106 Idaho 447, 449, 680 P.2d 869, 871 (Ct. App. 1984); see also State v. Murinko, 108 Idaho 872, 873, 702 P.2d 910, 911 (Ct. App. 1985). "In the absence of an adequate record on appeal to support the appellant's claims, [the appellate court] will not presume error." State v. Richmond, 137 Idaho 35, 38, 43 P.3d

794, 797 (Ct. App. 2002) (citing Beason, 119 Idaho at 105, 803 P.2d at 1011). To the contrary, any missing portions of the record are presumed to support the actions of the court below. State v. Repici, 122 Idaho 538, 541, 835 P.2d 1349, 1352 (Ct. App. 1992).

According to the minutes, five witnesses (four state's witnesses and one defense witness) testified at Dean's June 24, 2013 court trial. (R., pp.65-67.) On appeal to the district court, Dean provided only a partial trial transcript, containing the testimony of just two of the five witnesses who testified at that proceeding. (Compare R., p.110 (10/14/14 order directing "transcript of the trial prepared by David Marlow [to be] filed with" district court clerk) with 6/14/13 Tr. (partial trial transcript, filed with district court on 10/29/14); see also R., p.121, ¶2.(g) (representing in Notice of Appeal from district court's appellate decision that "[a] transcript has been made of *relevant* testimony" (emphasis added)).) That partial trial transcript, which has also been provided to this Court on appeal, is wholly inadequate for appellate review of Dean's sufficiency of the evidence claims because such review necessarily requires an examination of *all* of the evidence presented at trial to determine whether there was substantial evidence upon which a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Miller, 131 Idaho 288, 292, 955 P.2d 603, 607 (Ct. App. 1997); State v. Reyes, 121 Idaho 570, 826 P.2d 919 (Ct. App. 1992); State v. Hart, 112 Idaho 759, 761, 735 P.2d 1070, 1072 (Ct. App. 1987). In the absence of a complete trial transcript, this Court must presume the magistrate's finding of guilt was supported by substantial, competent evidence,

and the district court's appellate decision must be affirmed on that basis.[3] See, e.g., Fritts v. Liddle & Moeller Const., Inc., 144 Idaho 171, 174, 158 P.3d 947, 950 (2007) (presuming evidence supported lower court's decision where petitioner failed to provide an adequate record for review of fact-dependent claims).

CONCLUSION

The state respectfully requests that this Court affirm the district court's intermediate appellate decision that affirmed Dean's conviction for second degree stalking.

DATED this 30th day of August, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

[3] In the event this Court reaches the merits of Dean's sufficiency of the evidence claims despite his failure to have provided a complete trial transcript, the state submits the evidence was sufficient for the reasons articulated by the magistrate both in its written "Findings" (R., pp.68-77) and in its "Decision And Order Re: Motion To Reconsider" (R., pp.85-91), as well as by the district court in its "Decision And Order Re: Appeal" (R., pp.115-18), all of which the state adopts as its argument on appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of August, 2016, served two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

RANDOLPH B. NEAL
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482 CONSTITUTION WAY, STE. 222
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/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

LAF/dd